

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

UNITED STATES POSTAL SERVICE

and

Cases 9-CA-147648  
9-CA-147800  
9-CA-148220

NATIONAL POSTAL MAIL HANDLERS  
UNION, LOCAL 304, A DIVISION OF  
LABORERS INTERNATIONAL UNION OF  
NORTH AMERICA, AFL-CIO

*Julius U. Emetu, II, Esq.*, for the General Counsel.  
*Rebecca R. Horan, Esq.*, (*United States Postal Service, St. Louis, Missouri*),  
for the Respondent.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was tried in Lexington, Kentucky on August 18, 2015. Local 304, the Charging Party Union, filed the charges giving rise to this case between March 5 and 16, 2015. The General Counsel issued the complaint on May 28, 2015. The Union filed a charge, 9-CA-142443, on December 8, 2014, which it withdrew. That charge included the incident of November 25 contained in charge 9-CA-147800, which is the basis for complaint paragraph 5(b).

This case centers around a very contentious relationship between Janet Jones, a tow motor operator at the Lexington, Kentucky Processing and Distribution Center (P&DC), who is also the President of Local 304 and Jerry Green, an acting Manager of Distribution Operations (akin to a shift manager).<sup>1</sup> Additionally, important to the context of this case is that this Lexington facility is on a list of facilities slated for closure by the Postal Service. As a result it is significantly understaffed by supervisors and rank and file employees. USPS and the Union have a collective bargaining agreement, Joint Exhibit 1.

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<sup>1</sup> Other employees, who are active in the Union, also have a contentious relationship with Green.

The complaint allegations involve three separate incidents involving Jones and Green. The General Counsel alleges that Respondent, by Green, violated Section 8(a)(1) on October 13, 2014, by telling Jones that she was required to talk to him and not other employees when investigating potential violations of the collective bargaining agreement and threatened unspecified reprisals. The General Counsel alleges that on November 25, 2014, Respondent, by Green, increased supervision of Jones in order to engage in surveillance of her union activities. Finally, the General Counsel alleges that Respondent violated Section 8(a)(3) and (1) by calling the police to escort Jones from the Lexington facility on February 20, 2015, and issuing Jones a 7-day suspension on March 6, 2015.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

Respondent provides postal services for the United States. The Board has jurisdiction over the Respondent pursuant to Section 1209 of the Postal Reorganization Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### *The October 13, 2014 incident*

Janet Jones normally works the night shift (tour 1) from 10:00 p.m. to 6:30 a.m. However, occasionally she works on other shifts, including tour 3 (the afternoon shift) on which Jerry Green was the acting manager of distribution operations, or shift manager. On the evening of October 13, Jones alleges that while she was operating her tow motor, another unit employee complained to her that Green was doing bargaining unit work. Due to the shortages of personnel at the Lexington P&DC, Green admits that he often performs bargaining unit work. Jones has filed numerous grievances about this.

Jones alleges, that while on the clock, she investigated this allegation, by talking to the unit employee, who had been allegedly working with Green. This employee allegedly denied that Green had worked with her.<sup>2</sup> Jones then drove her tow motor to a loading dock. At the loading dock, Green allegedly stepped in front of her tow motor.

According to Jones' testimony, Green then said, "if you want to know something about me, you come and ask me, I've got something for you," Tr. 15. Green's testimony about this incident was elicited by leading questions. He denied telling Jones "that she could not speak to employees regarding potential grievances." Green also denied telling Jones that if she had

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<sup>2</sup> Pursuant to the parties' collective bargaining agreement, Jones is supposed to request "union time" from management to investigate potential grievances. She did not do this. She investigated the potential grievances while working, which she is not entitled to do.

questions about him, to come and ask him. Further, he denied threatening Jones. Tr. 189-90. Since Green did not testify about what he did say to Jones, I would ordinarily credit Jones.

5 However, as Respondent points out its brief, there are plenty of reasons to be skeptical of Jones' testimony. First, Jones testified that when she spoke to former union president Woody Dykes, he told her to document the incident, Tr. 15. There is no such documentation in the record. Jones did not report the incident to management or file a grievance.

10 When Jones signed her first charge filed in this matter on December 8, 2014, which was later withdrawn, she did not mention the October 13 incident at all, G.C. Exh. 1 (h). She mentioned only the November 25 incident. The first mention of the incident which allegedly took place on October 13, was the charge signed by Jones on March 3, 2015, which states the Green threatened her with unspecified reprisals on October 22, 2014; not October 13. In light of these factors, I conclude that Jones' testimony is not sufficiently reliable to credit. I therefore  
15 dismiss the allegations in complaint paragraph 5(a).

*The November 25, 2014 incident*

20 Jones testified that she saw Green doing bargaining unit work again on November 25, 2014, and documented this. Jones then drove her tow motor to one of the facilities' loading docks (the old dock). She testified that Green followed her there. At the loading dock, Jones was hooking her tow motor to an all-purpose container (APC). The materials in the APC were stacked too high. Green told Jones to lower the stack of materials in the APC. Jones responded that employees on Green's shift, tour 3, had stacked the materials too high and that they should  
25 take care of it. Green again ordered Jones to reduce the stack.

Jones began to drive off on her tow motor. Green told her she should back up. Jones responded, "what the hell?" Green took out his radio, put it to Jones' face and told her to repeat that. Jones countered with, "you're familiar with hell, aren't you? That's where you live, that's  
30 where you're going, that's where you belong. You're familiar with hell, aren't you, Reverend," Tr. 23-24. Green's response was "Yo mama!" Jones then drove off.

35 Green's testimony is not much different than Jones', Tr. 195-198. He said, however, that part of his job is to travel throughout the plant, including the loading docks, to insure that no mail is left behind. He testified further that this incident occurred around 10:00 p.m., at about the time of the shift change. Green denied seeing Jones making any notes on November 25. No such notes were introduced at hearing.

40 As with regard to the alleged October 13 incident, there is plenty of reason to be skeptical of Jones' testimony. First of all, it is important to note that the complaint allegation is about surveillance; nothing else. Jones testified that Green followed her immediately after seeing her make notes while observing Green performing bargaining unit work.

45 There are 2 accounts of this incident in the formal papers, G.C. Exh. 1 (h), which are much more vague about the surveillance aspect of the incident. In one Jones states she "was on the old dock cleaning off the APC and empty (sic) equipment. About that time like he always does trying to coerce me into a (sic) argument Jerry Green approaches me and says Janis I need

for you to lower that down.” In the charge signed on December 5, 2014, she stated, “I ... was on the old dock cleaning off the APCs and empty (sic) equipment. About that time (A) MDO Jerry Green approaches me. I knew he was coming because I had just documented down on paper that he was working mail and he saw me....”

Given the absence of the paper documentation of the protected activity and specificity of its temporal relationship to Jones’ encounter with Green on the old dock, I decline to find that Green followed Jones to old dock in response to seeing her make notes about him performing bargaining unit work. Moreover, the record establishes that Green had legitimate non-discriminatory reasons to be on the dock and to admonish Jones about towing an APC that was overloaded. Jones was not engaged in protected activity when the encounter occurred. In conclusion I dismiss the allegations in complaint paragraph 5(b).

*February 20, 2015 incident*

On February 20, 2015, Jones was called in at 6:00 p.m. to work overtime on tour 3, the shift on which Green was the acting MDO. For this tour, until her regular shift started at 10:00 p.m., Jones was not driving the tow motor. Green assigned her to a task related to sorting mail and/or dumping it on a conveyor belt. Although, the testimony is confusing, it is clear that Green either thought Jones was doing the wrong task or not doing her assigned tasks correctly.

After Green spoke to Jones, at about 9:30 p.m., she replied that since he was not satisfied with the job she was doing, he could get another employee to do the job. Jones then went to the restroom. Green went to room 56, a supervisors’ office. He asked Bonita Bartleson, the tour 1 acting MDO, to page Jones. Bartleson did so.

Bartleson told Jones that she had to follow supervisors’ instructions. However, I credit Jones’ testimony that Bartleson did not require her to go back and finish the task assigned to her by Green. I find that Bartleson told Jones to take her break and then start operating the tow motor at the beginning of tour 1.<sup>3</sup>

When Jones failed to reappear at the sorter, Green went back to room 56 and asked Bartleson and supervisor Matt Reed for assistance in escorting Jones out of the building. Neither Bartleson nor Reed agreed to do so. Then Green called plant manager Leslie Hawkins and told her he was not getting assistance from anyone at the plant. Therefore Green told Hawkins that he was going to call the Lexington Police, Tr. 152-54. Hawkins gave her consent.

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<sup>3</sup> Bartleson was inconsistent as to what she said to Jones. She conceded that she may have told Jones to take a break and then start her regular job as tow motor operator, Tr. 129.

Jones testified that after meeting with Jones, she went to the tow motor so that she would not waste time travelling to the break room. While riding to the break room, she testified that she saw Green doing bargaining unit work again. Jones testified that she made a note of this and then Green approached her and another tow motor operator, Bobby Webb, to stop them from talking to each other. I do not credit this testimony since it is inconsistent with Jones’ testimony indicating that she was in a hurry to get to the break room before having to start her tour 1 tow motor duties. Moreover, it is not corroborated by the allegedly contemporaneous notes made by Webb, G.C. Exh. 3(b), or Webb’s testimony. I find there was no interaction between Green and Jones regarding his performance of bargaining unit work after she left the sorter where she was working with him.

Lexington police officers came to the facility, arriving shortly before 10:00 p.m. Green and the police officers found Jones in the break room.<sup>4</sup> The police then assisted Green in escorting Jones out of the building. Jones clocked out at 10:04 p.m., shortly after the start of tour 1.

On March 6, 2015, Respondent issued Jones a 7-day “suspension.” Although characterized as a suspension, Jones neither missed work nor lost pay other than for her tour on February 20-21. The “suspension” is more like being put on probation than a suspension. The Union filed a grievance over the suspension, which was reduced to a non-disciplinary job discussion. Respondent agreed to pay Jones her wages for the night of February 20-21.

### *Analysis*

#### *The October 13, 2014 incident*

I have dismissed complaint paragraph 5(a) because, as explained above, I do not credit the evidence supporting the allegation. The General Counsel has not established that Jerry Green made the statements attributed to him by Janet Jones, as alleged in the complaint.

#### *The November 25 incident*

I have dismissed complaint paragraph 5(a) because, as explained above, I do not credit the evidence supporting the allegation. The General Counsel has not established that Green engaged in surveillance of Janet Jones’ protected activities.

#### *Calling the Police on February 20, 2015*

The Board has held that an employer violates Section 8(a)(1) when it threatens to call the police in order to restrain protected activity, *Winkle Bus Company*, 347 NLRB 1203, 1218-19 (2006); *Roadway Package Systems*, 302 NLRB 961, 973-74 (1991). It follows that an employer violates the Act when it actually calls the police to interfere with, restrain or coerce employees in the exercise of protected activity.

However, Janet Jones did not engage in any protected activity on the night of February 20, 2015, when Green called the police to escort her out of the Lexington facility. Nevertheless, given the great deal of animosity between Jones and Green, much of which stemmed from her union activities, I find that he would not have summoned the police, but for his animus towards her protected activity. Thus, I find that Respondent, by Green violated the Act in calling the police on February 20, 2015.

I reject Respondent’s argument that Green had no choice but to ask for police assistance given the animosity between him and Jones. Instead of calling the police he could have asked plant manager Leslie Hawkins to order Bartleson or Reed, or another manager to assist Green in

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<sup>4</sup> Contrary to Respondent’s brief at page 10, there is no evidence that Jones was verbally disorderly in the presence of the police. To the contrary, I find the police report merely reflects what Green told the police officers.

escorting Jones out of the plant. Even without this request Hawkins could have ordered a manager to help Green escort Jones out of the facility.

*The March 6, 2015 suspension*

Respondent issued Jones a suspension for failure to follow her supervisor's instructions on February 20. She clearly did not follow Green's instructions on that night. The General Counsel has not established that this suspension, later reduced to a job coaching, was motivated by anti-union animus. I therefore dismiss this complaint item.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>5</sup>

ORDER

The Respondent, the United States Post Office, Lexington, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Calling the Police to escort any employee from the post office facility in order to retaliate for any employee's protected activities, unless Respondent has a reasonable belief that the employee will engage in violent and/or criminal activity.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its Lexington, Kentucky facility copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where

<sup>5</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>6</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

5 notices to employees are customarily posted. In addition to physical posting of paper  
notices, the notices shall be distributed electronically, such as by email, posting on an  
intranet or an internet site, and/or other electronic means, if the Respondent  
customarily communicates with its employees by such means. Reasonable steps shall  
be taken by the Respondent to ensure that the notices are not altered, defaced, or  
covered by any other material. In the event that, during the pendency of these  
proceedings, the Respondent has gone out of business or closed the facility involved  
in these proceedings, the Respondent shall duplicate and mail, at its own expense, a  
10 copy of the notice to all current employees and former employees employed by the  
Respondent at any time since February 20, 2015.

15 (b) Within 21 days after service by the Region, file with the Regional Director a sworn  
certification of a responsible official on a form provided by the Region attesting to the  
steps that the Respondent has taken to comply.

(c) IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges  
violations of the Act not specifically found.

20 Dated, Washington, D.C. September 23, 2015



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Arthur J. Amchan  
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

WE WILL NOT call the police to assist management in escorting an employee from the premises of our facility in retaliation for the union or other protected activities of any employee, unless we have a reasonable belief that the employee will engage in violent and/or criminal activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL removed from our files all reference to the removal of Janet Jones from our facilities by the Lexington police on February 20, 2015 and WE WILL notify in her in writing that this has been done and that the removal by the police will not be used against her in any way.

UNITED STATES POSTAL SERVICE

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).

550 Main Street, Federal Office Building, Room 3003  
Cincinnati, Ohio 45202-3271  
Hours: 8:30 a.m. to 5 p.m.  
513-684-3686.



The Administrative Law Judge's decision can be found at [www.nlr.gov/case/09-CA-147648](http://www.nlr.gov/case/09-CA-147648) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board 1015 Half Street, S.E., Washington, D. C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 513-684-3750.